

Adopted	Rejected
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COMMITTEE REPORT

YES:	8
NO:	4

MR. SPEAKER:

*Your Committee on Commerce, Economic Development and Technology, to which was referred House Bill 1116, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6.1. (a) As used in this
- 5 section, "clean coal technology" means a technology (including
- 6 precombustion treatment of coal):
- 7 (1) that is used at a new or existing electric generating facility and
- 8 directly or indirectly reduces airborne emissions of sulfur or
- 9 nitrogen based pollutants associated with the combustion or use
- 10 of coal; and
- 11 (2) that either:
- 12 (A) is not in general commercial use at the same or greater
- 13 scale in new or existing facilities in the United States as of
- 14 January 1, 1989; or

1 (B) has been selected by the United States Department of
 2 Energy for funding under its Innovative Clean Coal
 3 Technology program and is finally approved for such funding
 4 on or after January 1, 1989.

5 (b) As used in this section, "Indiana coal" means coal from a mine
 6 whose coal deposits are located in the ground wholly or partially in
 7 Indiana regardless of the location of the mine's tippie.

8 (c) Except as provided in subsection (d), the commission shall allow
 9 a utility to recover as operating expenses those expenses associated
 10 with:

11 (1) research and development designed to increase use of Indiana
 12 coal; and

13 (2) preconstruction costs (including design and engineering costs)
 14 associated with employing clean coal technology at a new or
 15 existing coal burning electric generating facility if the
 16 commission finds that the facility:

17 (A) utilizes and will continue to utilize (as its primary fuel
 18 source) Indiana coal; or

19 (B) is justified, because of economic considerations or
 20 governmental requirements, in utilizing non-Indiana coal;
 21 after the technology is in place.

22 (d) The commission may only allow a utility to recover
 23 preconstruction costs as operating expenses on a particular project if
 24 the commission awarded a certificate under IC 8-1-8.7 for that project.

25 (e) The commission shall establish guidelines for determining
 26 recoverable expenses.

27 **(f) The commission has jurisdiction over transactions involving**
 28 **the purchase of clean coal technology from third parties, including**
 29 **the purchase of precombustion coal treated by gasification. The**
 30 **commission's jurisdiction includes the authority to review the**
 31 **terms of a transaction and determine whether the transaction is in**
 32 **the public interest.**

33 SECTION 2. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2002]: Sec. 83. (a) ~~No~~ **This section does not**
 35 **apply to the following:**

36 **(1) A corporation organized or operating under IC 8-1-13.**

37 **(2) A corporation that:**

38 **(A) is organized under IC 23-17; and**

1 **(B) has members that are local district corporations (as**
 2 **defined in IC 8-1-13-23).**

3 **(b) As used in this section, "control" means the power to direct**
 4 **the management and policies of a public utility, utility company, or**
 5 **holding company through:**

- 6 **(1) ownership of voting securities or stock;**
- 7 **(2) the terms of a contract; or**
- 8 **(3) other means.**

9 **The term does not include power to direct management and**
 10 **policies derived from holding an official position or corporate**
 11 **office with the public utility, utility company, or holding company.**
 12 **A person that owns, controls, or has the power to vote or the power**
 13 **to vote proxies that constitute at least twenty percent (20%) of the**
 14 **total vote power of a public utility, utility company, or holding**
 15 **company is presumed to have control of the public utility, utility**
 16 **company, or holding company.**

17 **(c) As used in this section, "holding company" means a**
 18 **company that has control over at least one (1) of the following:**

- 19 **(1) A public utility (as defined in section 1 of this chapter).**
- 20 **(2) A utility company.**

21 **(d) As used in this section, "person" means:**

- 22 **(1) an individual;**
- 23 **(2) a firm;**
- 24 **(3) a corporation;**
- 25 **(4) a company;**
- 26 **(5) a partnership;**
- 27 **(6) a limited liability company;**
- 28 **(7) an association;**
- 29 **(8) a trustee;**
- 30 **(9) a lessee; or**
- 31 **(10) a receiver.**

32 **(e) As used in this section, "reorganization" means a transaction**
 33 **that results in:**

- 34 **(1) a change in the ownership of a majority of the voting**
 35 **capital stock of a public utility;**
- 36 **(2) a change in the ownership or control of an entity that owns**
 37 **or controls a majority of the voting capital stock of a public**
 38 **utility;**

1 **(3) the merger of two (2) or more public utilities; or**

2 **(4) the acquisition by a public utility of substantially all the**
 3 **assets of another public utility.**

4 **(f) As used in this section, "utility company" means every**
 5 **corporation, company, partnership, limited liability company,**
 6 **individual, or association of individuals, their lessees, trustees, or**
 7 **receivers appointed by a court, that may own, operate, manage, or**
 8 **control any plant or equipment for the:**

9 **(1) conveyance of telegraph or telephone messages;**

10 **(2) production, transmission, delivery, or furnishing of heat,**
 11 **light, water, or power; or**

12 **(3) collection, treatment, purification, and disposal in a**
 13 **sanitary manner of liquid and solid waste, sewage, night soil,**
 14 **and industrial waste.**

15 **The term does not include a municipality that acquires, owns, or**
 16 **operates any of the foregoing facilities.**

17 **(g) A public utility, as defined in section 1 of this chapter, shall may**
 18 **not do any of the following without approval of the commission**
 19 **after a hearing:**

20 **(1) Sell, assign, transfer, lease, or encumber its franchise, works,**
 21 **or system to any other person, partnership, limited liability**
 22 **company, or corporation. or**

23 **(2) Contract for the operation of any part of its works or system by**
 24 **any other person, partnership, limited liability company, or**
 25 **corporation. without the approval of the commission after hearing.**
 26 **And no such**

27 **(3) Contract for or effect a reorganization of the public utility.**

28 **(4) Acquire control of a public utility, utility company, or**
 29 **holding company.**

30 **(h) A person may not acquire control of a public utility or a**
 31 **holding company of a public utility without approval of the**
 32 **commission after a hearing.**

33 **(i) A holding company that controls one (1) or more public**
 34 **utilities may not acquire control of a utility company without**
 35 **approval of the commission after a hearing.**

36 **(j) A public utility, except temporarily or in case of emergency and**
 37 **for a period of not exceeding thirty (30) days, shall may not make any**
 38 **special contract at rates other than those prescribed in its schedule of**

1 rates theretofore filed with the commission, and in force, with any other
 2 utility for rendering any service to or procuring any service from such
 3 other utility, without the approval of the commission. It shall be lawful,
 4 however, for any utility to make a contract for service to or from
 5 another utility at rates previously filed with and approved by the
 6 commission and in force.

7 ~~(b)~~ (k) The approval of the commission of the sale, assignment,
 8 transfer, lease, or encumbrance of a franchise or any part thereof under
 9 this section shall not revive or validate any lapsed or invalid franchise,
 10 or enlarge or add to the powers and privileges contained in the grant of
 11 any franchise or waive any forfeiture. No such public utility shall
 12 directly or indirectly purchase, acquire, or become the owner of any of
 13 the property, stock, or bonds of any other public utility authorized to
 14 engage or engaged in the same or a similar business, or operating or
 15 purporting to operate under a franchise from the same or any other
 16 municipality or under an indeterminate permit unless authorized so to
 17 do by the commission.

18 **(l) The commission shall issue an order not later than one**
 19 **hundred eighty (180) days after a petition seeking approval is filed**
 20 **under this section. If the commission fails to issue an order within**
 21 **one hundred eighty (180) days after the petition is filed, the petition**
 22 **is considered approved.**

23 ~~(c)~~ (m) Nothing contained in this section shall prevent the holding
 24 of stock lawfully acquired before May 1, 1913, or prohibit, upon the
 25 surrender or exchange of said stock pursuant to a reorganization plan,
 26 the purchase, acquisition, taking, or holding by the owner of a
 27 proportionate amount of the stock of any new corporation organized to
 28 take over at foreclosure or other sale, the property of the corporation
 29 whose stock has been thus surrendered or exchanged.

30 ~~(d)~~ (n) Every contract by any public utility for the purchase,
 31 acquisition, assignment, or transfer to it of any of the stock of any other
 32 public utility by or through any person, partnership, limited liability
 33 company, or corporation without the approval of the commission shall
 34 be void and of no effect, and no such transfer or assignment of such
 35 stock upon the books of the corporation pursuant to any such contract
 36 shall be effective for any purpose."

37 Page 2, line 12, after "Imposes" insert "**on a utility, other than a**
 38 **telephone company (as defined in IC 8-1-2-88) that provides local**

1 **exchange telephone service,".**

2 Page 2, line 12, delete "of not more than twenty-five" and insert "**of:**

3 **(1) five thousand dollars (\$5,000) for an initial violation or**
 4 **noncompliance found under subsection (d); or**

5 **(2) fifteen thousand dollars (\$15,000) for a second or**
 6 **subsequent violation or noncompliance found under**
 7 **subsection (d)."**

8 Page 2, delete line 13.

9 Page 2, line 14, delete "noncompliance found under subsection (d)."
 10 and block left beginning with "For".

11 Page 2, line 41, after "(e)." insert "**If the attorney general prevails**
 12 **in an action under this subsection, the attorney general may**
 13 **recover reasonable attorney's fees and court costs."**

14 Renumber all SECTIONS consecutively.

(Reference is to HB 1116 as introduced.)

and when so amended that said bill do pass.

Representative Fry